IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.133/1998

1. Miss Anne Mascarenhas,
major in age, resident of
Perxed wado, Guirim, House
No.379, Bardez, Goa.

2. Mrs. Sunita Malpekar,
major in age, resident of House
No.246, Malpe, Pernem, Goa.

3. Mrs. Rita Rodrigues, major
in age, r/o. Quitla,
Aldona, Bardez, Goa.

4. Mr. Satyavan Palyekar,
major in age, r/o. House No.44,
Bhanduvado, Palye, Pernem, Goa. .... Petitioners.

V/s.

1. State of Goa, through the
Chief Secretary, with his
Office at Secretariat,
Panaji, Goa.

2. The Chief Electrical Engineer,
Electricity Department, Vidyut
Bhavan, Panaji, Goa.

3. Shri Nilesh Y. Behare,
resident of Dhaveli,
Ponda, Goa.

4. Varsha Pilankar, resident of
House No.E-62, Merces Vaddy,
P.O. Santa Cruz.

5. Shri Nikhil Tergaokar,
residing near Holy Family
School, 'Gurukrupa',
Porvorim, Bardez, Goa.

6. Antonette Godinho,
residing near Two Cross, Bhati,
St. Jose de Areal.

7. Suchita Nanoskar,
Electricity Department,
Division VI, Sub-Division III,
Vidyut Bhavan, Mapusa, Goa.

8.Shri Stanley Lobo, resident
of Parra, Bardez, Goa.

9. Xinu Harmalkar, resident of
Oxel, Siolim, Bardez, Goa.

10. Shri Kishore Parulekar,
resident of Verem, Bardez, Goa.

11. Shri Premnath Gaude,
resident of Carambolim,
Tiswadi, Goa.

12. Shri Rajaram Nalkar,
resident of Ponda, Goa. ..... Respondents.

Mr. M.S. Sonak, with Ms. Puja Bharne, Advocates for the petitioners.

Mr. H.R. Bharne, Government Advocate for respondents No.1 and 2.

Mr.D.P. Bhise, Advocate for respondent No.3.
Mr. V.A. Lawande, Advocate for respondent No.4 - absent.

CORAM : N.N. MHATRE &
P.V. HARDAS, JJ.

DATE OF RESERVING THE
JUDGMENT : 21/01/2004.

DATE OF PRONOUNCING THE
JUDGMENT : FEBRUARY 09, 2004

J U D G M E N T : (Per MHATRE, J.)

This petition challenges the inaction of the respondents to appoint the petitioners as Lower Division Clerks (LDCs) with the first respondent. The petitioners have been clamouring for justice right from 1991, but have been denied the same.

2. The petitioners No.1, 2 and 3 were appointed in the Electricity Department as Nominal Muster Roll

(hereinafter, referred to as "NMR") employees. Petitioner No.4 joined the Department on 21.6.1984 as an NMR employee. The services of all the petitioners were terminated on 5.5.1988 pursuant to a Circular issued. On 13.7.1988, the petitioners were appointed as Meter Readers. The petitioners requested the respondents to regularise them as the others who were similarly situated, had been regularised by respondents No.1 and 2. In April, 1991, the petitioners filed Writ Petition No.128/91 before this Court for regularisation of their services. The petitioners pleaded that they had completed several years in service and had not been regularised. The petitioners also contended that the Government by an Office Memorandum dated 29.10.1990 issued instructions to all the Departments that the employees who had completed 5 years' of continuous service as NMR employees would be automatically qualified for being considered for regularisation. It was the petitioners' grievance in that petition that despite these instructions, the petitioner had not been regularised. On 15.4.1991, Rule was issued and all appointments made thereafter were made subject to the result of the petition.

3. It appears that some persons in the same Department filed Writ Petition No.375/92 challenging the

recruitment in respect of 34 vacancies of the Lower Division Clerks (LDCs.) in the Electricity Department. While admitting that petition, the Division Bench of this Court directed that seven Meter Readers in the order of seniority who were mentioned in the Select List for the post of LDC from the quota of NMR employees could be appointed as LDCs. Such appointments were, however, to be made subject to the result of the petition. Accordingly, the petitioners came to be appointed as LDCs on ad hoc basis in the Electricity Department.

4. Writ Petition filed by the petitioners i.e. Writ Petition No.128/91 was heard and disposed of on January 21, 1998. As the Government Pleader appearing before the Court stated that the petitioners had been absorbed as LDCs on ad hoc basis, this Court disposed of the petition as nothing survived. A month later, Writ Petition No.375/92 filed by some other persons claiming appointment as LDCs was disposed of. This petition challenged the process of selecting persons only on the basis of an oral interview. While deprecating the practice this Court set aside all appointments made and the selection of LDCs based upon oral tests alone was quashed and set aside. The appointments made under the interim orders dated 28.9.1982 were also cancelled. At this juncture, the first and second respondents did not

disclose to this Court that a petition had already been filed by the petitioners and had been disposed of in view of the statement made by the respondents that the petitioners had been absorbed as LDCs. The petitioners were not party to Writ Petition No.375/92.

5. Petitioners soon found themselves out of employment and in 1999 they were offered re-employment as Meter Readers, on ad hoc basis. Not left with any other alternative, the petitioners accepted this appointment as Meter Readers without prejudice to their rights in the present petition.

6. It is the contention of the petitioners that having acquired requisite qualifications and having worked as Meter Readers they ought to be regularised as LDCs as the Post of LDC is equivalent to the Meter Reader's post. According to the petitioners, persons junior to them have been regularised as LDCs although they did not possess better qualifications than the petitioners. It is also submitted on behalf of the petitioners that the respondents No.1 and 2 misled this Court and the petitioners into believing that their services would be regularised as LDCs and, therefore, Writ Petition No.128/91 had been disposed of in view of the statement made on behalf of the respondents No.1 and

2. It is urged on behalf of the petitioners that the first and second respondents ought to have disclosed to this Court that Writ Petition No.375/92 was pending. The petitioners do not have any knowledge of the same as they were not party to the petition. It is also submitted that because of the first and second respondents' non-disclosure to the Court of the pendency of both the petitions, conflicting orders have been passed in the two petitions, as a result of it, the petitioners have been greatly prejudiced.

7. On the other hand, it is submitted on behalf of the respondents No.1 and 2 that the order in Writ Petition No.375/92 made it amply clear that the petitioners were being appointed as LDCs subject to the result of the writ petition. According to the respondents, this was informed to the petitioners while appointing them as LDCs and, therefore, the petitioners could have no grievance today. An affidavit has been filed on 17.1.2004 stating that 81 posts of LDC were vacant. Out of these, six posts had been filled up by promoting Group 'D' employees. Subsequently, 19 more vacancies arose and there were, in fact, 100 vacancies on 20.1.2003. Out of these vacancies, only six posts were filled by promotion and 20 were filled by promoting persons on contract basis. There is no dispute that

today 80 posts of LDC lie vacant in the Electricity Department, out of which, 74 posts are to be filled in terms of the Government approvals.

8. There is no manner of doubt that the petitioners have found themselves in this imbroglio only on account of the first and second respondents' non-disclosure of facts to this Court in both the writ petitions No.128/91 and 375/92. However, on a plain reading of the order dated 28/09/1992, it is evident that this order was passed on a Civil Application filed by the present second respondent permitting them to make appointments to the posts of LDC which were lying vacant in the Electricity Department. Only NMR employees were permitted to be appointed by this Court. Accordingly, the petitioners came to be appointed as LDCs. The Departmental Promotion Committee which was held, in which the petitioners were found successful, considered the guide-lines for selection. Under these guide-lines, the posts of LDC were to be filled in the following manner :

i) 12 1/2% by promotion failing which by direct recruitment.

ii) 50 % eligible candidates from work-charge establishment failing which by direct recruitment.

iii) 25 % eligible candidates from NMR/Daily

Wage Establishment failing which by direct recruitment.

iv) 12 1/2% by direct recruitment.

9. Therefore, it is evident that 25 % of eligible candidates were to be absorbed from the NMR employees. There is no doubt that the petitioners were employed as such, and, therefore, we do not see any difficulty on the part of respondent No.1 in appointing the petitioners as LDCs, especially in view of the fact that the affidavit of the first and second respondents discloses several vacancies. Had the respondents brought the correct facts to the notice of this Court, when it was deciding both the writ petitions No.128/1991 and 375/92, the petitioners would not have found themselves in their present predicament. Having accepted employment as Meter Readers in 1998 would not mean that the petitioners should continue as Meter Readers, specially in view of the fact that they had accepted this employment without prejudice to their rights and contentions in the present petition.

10. The petition is allowed. The petitioners shall be appointed as LDCs immediately. Rule made absolute, with costs.

NISHITA MHATRE, J.

P.V. HARDAS, J.

ssm.